



NORWEGIAN REFUGEE COUNCIL

Property restitution in practice:
The Norwegian Refugee Councils' experience

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Introduction

The Norwegian Refugee Council (NRC) welcomes the opportunity to comment on the Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons (Draft Principles). Our input is based on our own experiences of attempting to uphold this right through our Information Counselling and Legal Assistance programs (ICLA) in more than a dozen countries around the world.¹

Information and legal assistance is a comparatively new area of work, both for NRC and most other humanitarian agencies. Legal aid might not seem the first priority in a situation where people's physical needs for food, shelter, security, basic healthcare and education have not been met. Nonetheless, its practical value in post-conflict situations is being increasingly recognized. Re-establishing the rule of law in a country devastated by war and destruction is as important as rebuilding the basic transport and communications infra-structure. Providing people with a legal remedy to the violations that they have suffered is one of the most concrete steps to building a functioning justice system. Legal aid is also a vital form of assistance for people who have been forced to flee from a conflict, or other disaster, and are seeking to realise their 'right to return home'.

Despite considerable advances in human rights and humanitarian law in recent years, the right to land, housing and property restitution is only gradually gaining recognition.² Indeed, until recently, the lands, homes and other possessions of the 'losers' of an armed conflict were widely regarded as part of the 'spoils of war' by the victors. The right of refugees and internally displaced persons (IDPs) to return to their homes and places of habitual residence and to have their property restored to them has been recognized by the UN Security Council in relation to a number of conflicts and has been included in a number of peace agreements. Nevertheless, NRC's own experiences indicate that enforcement of this right remains patchy.

NRC would, therefore, endorse the view, expressed in the Special Rapporteur's progress report, that 'to date, approaches to housing and property restitution remain disparate, and that many restitution policies are marred by conceptually flawed

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² See Scott Leckie (ed) *Returning Home: housing and property restitution rights of refugees and displaced persons*, Transnational Publishers, Ardsely NY, 2003.

strategies, biased policies and ineffectual institutions' at both a national and international level.³ A number of common obstacles to the effective implementation of the right to housing and property restitution have been identified, including: secondary occupation, property destruction . . . ineffectual institutions and discriminatory restitution programmes.⁴ NRC would add to this list: a lack of physical security for those wishing to return and a lack of an effective system of legal aid, using both formal and informal mechanisms, for would-be returnees. This paper will discuss both of these issues in more detail.

At a practical level, NRC's ICLA program has helped tens, if not hundreds, of thousands of displaced people to obtain the restoration of their land, housing and property rights.⁵ No other humanitarian organisation has comparable experience of providing such assistance on such a scale and in such a variety of settings. NRC has implemented ICLA programs in: Croatia, Bosnia-Herzegovina, FYR of Macedonia, Serbia – Montenegro including Kosovo. NRC closed down the ICLA-activity in the Balkan region effective from January 2005, but local NGOs, which arose out of NRC's programs, are continuing the work in Pristina, Belgrade, Sisak and Vukovar. There are also ICLA programs in Sudan, Uganda, the Democratic Republic of Congo, Burundi; Georgia and Azerbaijan; Afghanistan and Pakistan; Sri Lanka; and Colombia. The experiences of some of these programs, and the different approaches that they have taken to the issue of land, housing and property restitution, are detailed below.

As an international humanitarian Non-Government Organisation (NGO) NRC has to respond to events in the field, which are rarely static and are usually fast-changing and unpredictable. Consequently our work is often reactive and pragmatic. NRC has, so far, not devoted sufficient time to developing a principled, pro-active and overarching strategy towards the issue of land, housing and property restitution, despite its obvious importance. NRC shares the view of the Special Rapporteur that there is a need to establish 'a comprehensive approach to restitution policy, informed by international human rights law.'⁶

NRC's interest in Housing, Land, and Property (HLP) rights is based on its field presence and the methodology that it has developed in the field for tackling these issues. NRC's main perspective is based on our programs to support return and, other durable solutions, but NRC is also interested in HLP rights in the context of food security for refugees, IDPs and returnees.

NRC also believes that the 'right to restitution' should not be made conditional on the physical return of someone who has been displaced from their home or place of habitual residence. Return may be impossible due to the security situation, or other barriers, but the person still has the right to have his or her property returned so that it

³ *Housing and property restitution in the context of the return of refugees and internally displaced persons, Progress report of the Special Rapporteur*, Paulo Sérgio Pinheiro, submitted in accordance with Sub-Commission resolution 2003/18, UN Doc. E/CN.4/Sub.2/2004, 1 May 2004.

⁴ *ibid.*

⁵ The term 'housing, land and property rights' is used in this paper, despite its rather tautological nature, as both 'land rights' and 'housing rights' sometimes have a more widely accepted meaning than 'property rights' under both international law and in some of the countries where NRC has ICLA programs.

⁶ UN Doc. E/CN.4/Sub.2/2004, 1 May 2004.

can be used or disposed of in whatever manner he or she decides. There are several countries in which NRC has programs where return is not currently a viable option, but where displaced people would benefit from restitution programs that enabled them to sell or rent out their houses or lands. NRC would also emphasise that a displaced person should not forfeit his or her right to benefit from a restitution program through opting for local integration.

The purpose of this paper is to document NRC's own experiences of attempting to uphold HLP rights in the different settings where NRC has programs. It details some of the problems that we have encountered and the solutions that we have sought to develop in response. A comprehensive assessment of NRC's ICLA program is beyond the scope of this paper, however, it is necessary to place the issue of HLP rights restitution within the context of the development of information, counselling and legal assistance by NRC.

Not all of the countries where NRC has ICLA programs are discussed in this paper for reasons of time and space.⁷ However, an attempt has been made to provide a reasonable geographical spread of programs and to detail some of the main problems that have been encountered and how each program has attempted to deal with these on a practical level.

Origins and methodology

The ICLA program developed during the 1990s out of two specific NRC projects: the Information and Counseling on Repatriation project (INCOR) in Norway, and the Civil Rights Project (CRP) in former Yugoslavia. The target group for both projects was people who had been driven from their homes because of the conflicts in former Yugoslavia.⁸

The focus of the INCOR project is to provide information and counselling on repatriation to refugees, asylum seekers and people with residence in Norway on humanitarian grounds. The idea and the core activities of INCOR was the main base for the development of ICLA and the core package of an ICLA program usually includes:

- Information
- Counselling
- Legal assistance
- Monitoring
- Documenting problems
- Advocacy
- Rights-awareness training
- Capacity-building of local partners

⁷ The ICLA programs in Burundi, Sudan and the Democratic Republic of Congo have been omitted for these reasons and there is only a brief discussion of ICLA Pakistan and the individual Balkans programs.

⁸ For details see *ICLA Handbook, Return Facilitation, Information, Counseling and Legal Assistance*, Norwegian Refugee Council, 2004.

It should be noted that return has always been recognised as only one of the potential durable solutions for NRC's target group and, where return is impossible, or not the option of choice of the displaced people, NRC's ICLA programs have often helped to promote local integration. However, ICLA has never been involved in status determination or third country resettlement activities. The focus of ICLA's information and legal advice has usually been on specific issues relating to displacement and return and ICLA centres do not usually take up more general legal cases that could be dealt with by more appropriate national institutions or organizations.

NRC has, therefore, approached the right to land, housing and property restitution primarily through the issue of return and return-related programs. Indeed NRC's ICLA programs are often implemented alongside, and in partnership with, other NRC projects, such as Shelter, Education and Distribution of food- and non-food-item programs, as part of an integrated package to assist displaced persons and returnees.⁹ This can range from checking that the recipients of a shelter program have tenure rights, to more general 'rights awareness' training of displaced people, teachers and the public authorities. NRC's IDP-project in Geneva has developed training modules on the UN Guiding Principles on Internal Displacement, using a formula which brings together local authorities, national and international NGOs and IDP communities. The workshops focus on capacity building and improving response to the protection and assistance needs of the internally displaced at the local and national level.

Such 'rights-based' activities are becoming an increasingly frequent part of the work of many humanitarian agencies, who sometimes also use the term 'protection' to refer to principles of good programming – such as ensuring that aid reaches the most vulnerable, is delivered in a way that respects the rights and dignity of the beneficiaries and helps these to regain control over their own lives. However, NRC also often implements ICLA projects on a stand-alone basis and does not regard it as a 'soft program' activity.

The Balkans

NRC's first field-based ICLA program was the Civil Rights Project (CRP) in the former Yugoslavia, which began in Eastern Slavonia (Croatia) in 1996. A second office was opened in Novi Sad (Serbia) in 1997 and between 1999 and 2001 the CRP opened 13 more offices covering much of the former Yugoslavia, mainly in Kosovo. Although NRC's CRP was not the only project providing such assistance, it was the largest single program of its kind. It was also the only one with a truly regional presence and perspective, which enabled it to engage in cross-border and cross-boundary follow-up work on particular cases.¹⁰

⁹ NRC has identified Shelter, Education, Distribution and ICLA to be its four core areas of program activity.

¹⁰ *Legal Aid Against the Odds: evaluation of the Civil Rights Project of the Norwegian Refugee Council in former Yugoslavia*, Norwegian Ministry of Foreign Affairs, January 2003. Other international NGOs that ran similar projects include: the American Refugee Committee, the International Rescue Committee, Mercy Corps Scotland and the United Methodists Committee on Relief.

The main objective of the CRP was to enhance the protection of the civil rights of IDPs and refugees both in their places of origin and of residence. This was achieved through providing direct information, advice and legal assistance to displaced people and through an overall strengthening of judicial systems on a non-discriminatory basis. Advice was given both to those who wished to take part in voluntary repatriation programs and to those who had decided to opt for local integration in their places of temporary residence. Finally, assistance was also given to people who had been identified as at risk of displacement because they were facing a situation that might cause them to flee their homes in the future.¹¹

The first CRP office was opened in the context of the Erdut Agreement, which formally ended hostilities in Croatia in November 1995. The expansion of the ICLA program took place alongside increasing concern amongst the international community to reverse the effects of so-called 'ethnic cleansing', which had led to millions of people being driven from their homes throughout the Balkans. The right of returnees to have their property restored to them had been formally recognized by UN Security Council resolutions in relation to Croatia,¹² Bosnia-Herzegovina¹³ and Kosovo.¹⁴ One of the tasks that the CRP set itself was attempting to put this formal policy into practice through tackling some of the legal and administrative barriers to restitution that existed.

Both the Eastern Slavonia and Novi Sad offices had a largely Serb clientele, and this pattern was repeated as other offices were opened. The CRP project in Bosnia – Herzegovina initially assisted mainly Serb refugees exiled from Croatia, but over time focused more on Croat and Bosniak IDPs that had been forced to leave the Republika Srpska. The Kosovo CRP initially geared its services towards Albanian returnees, but changed its focus over time towards the Serbian minority. While in 1999 approximately 75 per cent of the Kosovo CRP's case-load were Albanian and 16 per cent Serb, this ratio gradually shifted and by 2002 it had changed to 33: 47.¹⁵ Overall, Serbs were the main ethnic group assisted by the CRP, as this was the group most in need of its services by the late 1990s.¹⁶ By the start of 2000 it was clear that Serbs had become the largest single group of IDPs in the Balkans – and this remains the case until today. The increasingly desperate position of Kosovo's Serbs (and other non-Albanian minorities), after NATO's intervention in 1999, led the CRP, in consultation with the UN High Commissioner for Refugees (UNHCR), to insert the objective of 'protecting people who were at risk of further displacement' into its mandate.¹⁷

The CRP was implemented in the context of a huge displacement crisis. The issues of integration, return and compensation were highly politicized. Legal procedures were bureaucratic, repetitive, and hard to understand. The authorities lacked accountability and often acted in an arbitrary fashion. National systems of legal aid were almost non-

¹¹ Legal Aid Against the Odds, January 2003.

¹² Security Council resolution 1009 (1995).

¹³ Security Council resolution 752 (1992).

¹⁴ Security Council resolutions 1244 (1999) and 1199 (1998).

¹⁵ Legal Aid Against the Odds, January 2003, p. 17. The remainder were members of Kosovo's other ethnic minorities.

¹⁶ *ibid.*

¹⁷ See UNHCR/OSCE *Minority Assessment Reports*, Kosovo, Vols 1 – 7, 1999-2001.

existent. It was in this context that the CRP's service of providing refugees and IDPs with advice on issues of access to place of origin, property and tenancy claims, and matters hampering the re-establishment of life in place of temporary residence, proved to be so vital.

It is difficult to provide a full analysis of the CRP's legal cases because statistical information is incomplete and there are some differences in the registration categories used by different country projects. This reflects the *ad hoc* way in which the CRP evolved in response to the changing situation on the ground.¹⁸ Nevertheless, a clear pattern can be seen in the development of the overall case-load, which shows that the two most important issues in which CRP assistance was sought were for help in obtaining documents and asserting housing and property rights.

One of the first challenges of the Eastern Slavonian CRP was to help a large number of Croatian Serbs – who had been left stateless by the break-up of the former Yugoslavia – to obtain Croatian citizenship. Later the project helped thousands of clients to obtain other vital documents necessary for them to reconstruct their legal identity and to claim their other rights and entitlements, such as pensions.

Many people, throughout the former Yugoslavia also lacked official titles to their lands, housing and other property, either because they had lost them during the conflict or had relied on informal agreements when making transactions – often to avoid the restrictions on multiple ownership or the high taxes that characterized the previous socialist regime. Helping clients to obtain these titles became a major task of the CRP.

The CRP also became increasingly active in attempting to recover the ownership and occupancy rights of people who were deemed to have abandoned their homes voluntarily.¹⁹ Some of these owned their own houses while others had previously lived in socially-owned accommodation.²⁰ Both were denied the right to return home, particularly by the Croatian authorities, as part of a blatantly discriminatory policy that affected tens of thousands of people. The one exception to this rule was Bosnia-Herzegovina, where property repossession legislation imposed by the Office of the High Representative recognized the unique character of this category, making the differences between repossessing privately and socially owned property close to non-existent.

Forced evictions and secondary occupations were common practices by all sides in the Balkan wars and all ethnic groups were affected. However, while the international community made a determined attempt to 'un-pick' the effects of this practice in Bosnia - Herzegovina, the Croatian authorities showed no such enthusiasm. Instead they largely confined themselves to evicting Croatian Serbs who

¹⁸ The statistics are also slightly skewed because the Kosovo CRP registered a very large number of cases, mainly from the majority Albanian population, of people who were seeking compensation and help in reconstruction of their homes in 1999, but subsequently decided not to pursue these claims.

¹⁹ *Triumph of form over substance, Judicial termination of occupancy rights in the Republic of Croatia and attempted legal remedies, Analysis of 586 individual cases*, Norwegian Refugee Council, Civil Rights Project, Croatia, October 2002.

²⁰ This policy was partially disguised by a simultaneous 'privatization' of what was previously 'social housing' and largely escaped criticism from the international community.

were deemed to be illegally occupying houses in Eastern Slavonia, while resisting attempts by this group of IDPs to recover their original homes elsewhere in Croatia.²¹

The CRP filed hundreds of cases on behalf of Serbian refugees and IDPs in the Croatian courts. A database was developed to track these cases and a report analyzing the way that the Croatian judiciary handled 586 individual cases was published.²² Test cases were also brought to the European Court of Human Rights.²³ While these were declared inadmissible, due to the fact that the alleged violations occurred before Croatia ratified the European Convention on Human Rights (ECHR) in 1997, the Court did voice its concern at the lack of any effective domestic remedies for the applicants.²⁴ These cases, even when unsuccessful, helped to pressurize the Croatian authorities and some observers have testified to the effective impact of the CRP's lawyers through 'sheer persistence.'²⁵ If the international community had exerted more pressure on the Croatian authorities to restore housing, land and property rights, more might have been achieved for the displaced population.

The cost and length of time that is needed to bring such cases, however, makes the development of a test-case strategy problematic for a humanitarian organization such as NRC – which often cannot plan being in a country for more than a few years. In this respect, it is worth noting the contrast between the situation in Bosnia-Herzegovina, where a policy of restitution and minority return has been successfully implemented, and Croatia, where it largely has not. One crucial difference is that the international community was prepared to impose laws and practices that conform to international human rights standards in Bosnia-Herzegovina. Another is that they also funded housing and property restitution policy through, amongst other things, the provision of an effective free legal aid service.

One of the most successful interventions by the CRP office in Bosnia-Herzegovina was the targeting of cases where police and judicial staff were illegally occupying properties belonging to IDPs. While these cases were invariably delayed, due to a lack of cooperation by the national police force, many cases were solved soon after the CRP had taken them on and advocated for a return of the property to its' pre-war occupant. This example show clearly how the introduction of an international monitoring and enforcement mechanism does not automatically lead to results, but that the provision of legal services to the displaced can help bring compelling cases to these mechanisms were the national authorities fail to act.

The situation in Kosovo differed from both Bosnia-Herzegovina and Croatia. Throughout the 1990s, discrimination against the Albanian majority was manifested in the form irregular tenancy arrangements, arbitrary forced eviction, and restriction on property transactions. Armed conflict in Kosovo in 1998-1999 led to the destruction of over 120,000 houses and when the war ended many homes, abandoned by Serbs, were occupied by returning Albanian refugees. Land, housing and property rights became an extremely sensitive issue in the context of Kosovo's ethnically divided society.

²¹ Norwegian Refugee Council, Civil Rights Project, Croatia, October 2002.

²² *ibid.*

²³ *Rudan v. Croatia*, Application No. 45943/99 and *Momcilovic v. Croatia* Application No. 59138/00.

²⁴ *ibid.*

²⁵ Legal Aid Against the Odds, January 2003, p.22.

The international community, which assumed direct responsibility for the governance of the province after NATO's intervention in 1999, appears to have genuinely pursued a policy aimed at restitution and minority return, but this met with a spectacular lack of success. A huge number of Serbs and other ethnic minorities fled from Kosovo in the aftermath of NATO's intervention. More left in subsequent years, in the face of a sustained campaign of discrimination, violence and intimidation. Despite the presence of 40,000 international troops, and a huge international humanitarian and governance mission, Kosovo's non-Albanian ethnic minority population has continued to decline. Minority return has been practically negligible. Out of a total of 225,000 who fled Kosovo, less than 10,000 Serbs, Romas and other minorities have returned since UN commenced administration of the province in 1999.²⁶

CRP Kosovo established eight offices throughout the province in 1999. However, it could provide little legal assistance to potential clients as, for the first few months of the project's existence, the courts were barely functioning and there was no effective rule of law. A decision was also taken by the new UN administration (UNMIK) to remove property claims from the jurisdiction of the ordinary courts and to instead create a Housing Property Directorate (HPD) and Housing Property Claims Commission (HPCC).²⁷ Unfortunately the Regulation empowering these bodies to start processing claims was not signed until 31 October 2000 and their work was further delayed by organizational problems.

The HPD and HPCC were from the beginning unable to deal satisfactorily with the case load they were dealing with. A decision was made to verify all claims individually and to execute eviction orders. The whole process was to be overseen by international staff (because the impartiality of local staff was considered suspect) so each statement and document had to be translated. Efforts to speed up the process, and reduce the cost, resulted in the postponement of some of the more difficult cases and both HPD and HPCC came to be widely regarded as ineffective institutions.²⁸ Their work however is finally gaining momentum (April 2005). Decision has been reached on 24,912 claims out of 29,070 claims.

CRP Kosovo and Serbia were able to pursue some cases of illegal occupation because the properties had subsequently been rented out to members of the international community.²⁹ Action was also taken against some NATO contingents that had illegally occupied people's property.³⁰ However, even where CRP was able to regain the right to a particular property on behalf of a client from an ethnic minority, he or she usually decided to sell rather than reoccupy it because return was considered to be too dangerous. A major lesson from CRP Kosovo's experience is that without adequate security guarantees housing and property restitution will not result in return.

²⁶ NRC 2004. Annual report on the situation of the world's refugees and IDPs

See Alan Dodson and Veijo Heiskanen, 'Housing and property restitution in Kosovo', in Leckie (ed), 2003.

²⁸ Legal Aid Against the Odds, January 2003.

²⁹ Indeed the presence of such a large contingent of international workers significantly inflated rents and property prices and thereby directly contributed to the displacement crisis.

³⁰ A case pursued against German KFOR by the CRP Prizen office is particularly notable.

In the absence of a functioning legal system for dealing with housing and property claims, Kosovo and Serbia CRP devoted substantial resources to assisting members of minority groups to obtain personal documents. Some people, particularly from the Roma community, had never previously held such documents. Others had lost their documents during the conflict and official copies held in Registry offices, had also been destroyed or misplaced. Without proof of their identity and citizenship these people were often denied other legitimate rights.

A second documentation problem concerned IDPs who had abandoned hope of return to their original homes and opted instead for local integration in Serbia or other parts of Kosovo (sometimes in secondary occupation). The lack of a recognized address meant that they were sometimes denied health care and other welfare benefits. An official reluctance to recognize that these people are never likely to return home – on the part of both the Serbian authorities and the international community – means that they remain deprived of any form of durable solution to their plight.

Afghanistan and Pakistan

NRC established a series of Information and Legal Aid Centres (ILACs) in the tribal areas of the North West Frontier Province (NWFP) of Pakistan, which borders Afghanistan, during the course of 2002 and 2003. Seven ILACs were eventually established with the objective of assisting Afghan refugees in their voluntary repatriation.

NRC's ILACs were part of a network of information, advice and legal aid centers created in partnership with UNHCR in Pakistan to help Afghans who wished to return, on the basis of informed consent and in conditions of safety and dignity.³¹ Many of the refugees were living in camps guarded by the Pakistani authorities and residents were sometimes denied permission to leave these camps and subject to other restrictions. Many Afghan refugees found it impossible to return due to problems in paying off debts that they had incurred in Pakistan and some found themselves in a situation of 'bonded labour'. An increasing number of Afghans have been subject to arrests by the authorities – often for not having the correct papers – and the ILACs often helped to arrange bail for them. The centres in Peshawar also identified a considerable caseload of problems that were preventing return and settlement and many cases – particularly relating to land and property claims – that needed to be followed up within Afghanistan.

The sudden collapse of the Taliban regime in Afghanistan, at the end of 2001, and the astonishingly quick return of around two million refugees in 2002 were initially hailed as major achievements. However, the pace of return slowed considerably during 2003, as it became increasingly clear to many returnees that they had come back on grounds of inadequate information about the poor security conditions and the lack of economic opportunities that they were likely to face.³² By the summer of 2003 the Taliban, which had previously seemed on the verge of extinction, had regrouped. Aid

³¹ This included NRC's 7 ILACs, together with two similar centres run by another international NGO, ICMC, and x local NGOs.

³² See, for example, *Out of sight, Out of mind: the fate of the Afghan refugees*, Amnesty International, June 2003, and David Turton and Peter Marsden, *Taking refugees for a ride, the politics of refugee return to Afghanistan*, Afghanistan Research and Evaluation Unit, December 2002.

workers were deliberately targeted in these attacks, and around 50 were murdered in 2003 and 2004, not only by Taliban but also by militias not related to Taliban. This forced some organisations to withdraw from the country, or dramatically restrict their activities, which worsened the plight of ordinary Afghans who had been their beneficiaries. Many districts and provinces are now without relief organisations for security reasons.

Even before the re-emergence of the Taliban, the writ of authority of Afghanistan's central government did not extend much beyond the outskirts of Kabul. Lack of security is not only caused by Taliban. The lack of security in the Pashtun belt can largely be attributed to the international military presence adopting the wrong strategy, not promoting law and order to a sufficient degree. More than half of Afghanistan's provincial Governors and military commanders were self-appointed. The courts were barely functioning and, even in the areas that they controlled, the police and public officials were unable to protect basic human rights. People were routinely subject to arbitrary detentions and mistreatment, often in privately run prisons. Corruption was rife. Women suffered pervasive discrimination and a denial of their rights. Much of the country also remained essentially lawless, as powerful regional warlords battled it out for control.

Establishing a network of legal aid centres in such circumstances was a challenging prospect. Nevertheless, eight ILACs were eventually set up during 2003/2004 covering much of the east, west, north and centre of the country.³³ The centres provide free assistance, including direct legal representation by local Afghan lawyers, to people who have been forced to flee their homes or who have recently returned.

During the course of 2003, NRC's three ILACs in Afghanistan registered 408 legal cases (and approximately 2,000 advice and information cases). This significantly under-represents the numbers of beneficiaries as most of the cases were brought by heads-of-households on behalf of whole families. In addition to this, a large number of cases had multiple beneficiaries. For example, one case registered by Kabul ILAC concerned a dispute over access to water and affected around 2,100 individuals.³⁴ In 2004 NRC opened five more ILACs in Afghanistan and there was a corresponding increase in its caseload. By the end of the year the centres had registered 1,106 housing, land and property rights cases, representing approximately 250,000 beneficiaries.³⁵ The ILACs' clear-up rate also increased from 10 per cent in 2003 to 18 per cent in 2004. By 2005 the ILACs were registering between 100 and 200 cases per month.

The vast majority of the Afghanistan ILACs' case-load relates to land and property rights.³⁶ Some of these cases involve simple disputes between neighbours, or within families, about the ownership or boundaries of a particular piece of land. Families

³³ Centres were established in Kabul, Jalalabad, Puli Khumri, Mazari Sharif, Maimana, Bamyan and Herat. A decision was taken not to establish ILACs in the south of the country due to the security situation.

³⁴ *Defending Rights at Risk*, Annual Report of the Norwegian Refugee Council Information and Legal Aid Program Afghanistan 2003.

³⁵ NRC annual report 2004.

³⁶ *ibid.* These cases count for around 80 per cent of the case-load and make up over 99 per cent of the beneficiaries.

returning to Afghanistan after years in exile are often considerably bigger in size and there may be disputes over inheritance rights within the family. Where the land in question has been cared for by others, or bought, sold, leased, rented or otherwise transacted, while the original owner was away, there may be problems in ensuring that this was done in a fully transparent manner. Given the lack of a properly functioning judicial system in much of the country, NRC's legal counsellors are often called upon to mediate or act as guarantors in such disputes.

This situation is further complicated because the issue of land and property rights and land reform has been extremely controversial in Afghanistan's recent past. Land ownership in Afghanistan is starkly inequitable and a significant proportion of the rural population is landless. A feudal-like system prevailed under the monarchy and its collapse removed the few privileges that this group, whose status was similar to that of peasants, once enjoyed. A mismanaged attempt at land reform was one of the major causes of the revolt against the communist regime in 1978 and disputes over land ownership continue to be a major source of ethnic conflict down to the present day.³⁷ The rapid return of so many refugees has severely exacerbated these tensions and land disputes remain one of the most potent sources of conflict in Afghanistan.

In April 2002 President Karzai's administration banned all further distribution of Government-owned land, in recognition of the fact that powerful regional warlords would simply grab it for themselves and their supporters.³⁸ However, disputes over land distributed under previous regimes remain a substantial part of the ILACs' caseload. Over the last 30 years, for example, a piece of private land could have been compulsorily purchased, expropriated or re-designated as belonging to the Government; granted to another individual through a statutory decree; privately transacted between different individuals, using official or customary documents; forcibly seized or abandoned by its owner and then illegally occupied by another party; or sold, leased, exchanged, gifted, inherited, or otherwise transferred on to others.³⁹

Determining who are the legitimate owners of land and property in Afghanistan is made more difficult due to the lack of a complete set of official cadastral records and a multiplicity of ownership documents, both customary and official. It is further complicated by Afghanistan's plural legal system, in which State, religious and customary law often overlap. Customary law, in particular, has become increasingly important as the official system went into abeyance during the conflict. A researcher from the International Commission of Jurists recently noted: 'Not a single court visited in the course of the mission in either Kabul or Mazar-e-Sharif had access to or a collection of Afghanistan's main statutory laws. Even the Ministry of Justice and the University of Kabul do not hold complete sets of Afghanistan's statutory laws and regulations.'⁴⁰ The report also stated that: 'None of the judges interviewed expressed

³⁷ Liz Alden Wily, *Land Rights in Crisis: Restoring land tenure to Afghanistan*, Afghan Research and Evaluation Unit, Kabul, March 2003.

³⁸ Decree 99 of the Head of the Transitional Government, Regarding Non-distribution of intact and uncultivated State-owned land, 4/2/1381 HJ (24 April 2002).

³⁹ For example, see Conor Foley, *Land disputes in Eastern Afghanistan*, Norwegian Refugee Council, 2004.

⁴⁰ Dr. Martin Lau, *Afghanistan's Legal System and its Compatibility with International Human Rights Standards*, The International Commission of Jurists, November 2002.

any significant interest in education or training or the provision of statutory materials to which none of them had access. Invariably, judges referred to copies of the *Holy Quran* and stated that it contained all the laws that were needed.⁴¹

The ILACs have responded to this challenge by representing clients at *Shuras* and *Jirgas* (traditional bodies for resolving such disputes). NRC's legal counsellors use Afghan civil law, which is largely based on *Sharia*, but is significantly more progressive than Afghan customary law on issues such as women's rights. By helping to mobilise and reconcile communities, NRC's legal counsellors have also been able to resolve some tribal conflicts and even persuade commanders and warlords to end illegal occupations of land.⁴² NRC's legal counsellors have also conducted training sessions on property law for Afghan judges and public officials and co-published a manual, with UNHCR, that provides a guide to the applicable law.⁴³

NRC would support the establishment of a Land Commission for Afghanistan, but believes that such a Commission needs to take local conditions into account. In particular, it would need to recognise the role and significance of *Sharia* and Afghan customary law in solving such disputes. In this context, NRC endorses the view of the Special Rapporteur that traditional dispute resolution mechanisms may be integrated into a restitution policy 'so long as these are in accordance with international human rights law and principles.'⁴⁴

A policy of restitution in Afghanistan must be based on a strengthening of the institutions of law and order and persuading the international community to make good their initial promises of financial and material assistance.⁴⁵ More consideration also needs to be given to some of the harmful side effects of two particular policies: the United States (US)-led 'war on terrorism' and the rapid transition of the commercial market in a situation of instability and lack of law and order, both of which are creating significant problems in Afghan society.

Land has become an extremely valuable commodity due to the rise of real estate prices in Kabul and the growing amount of poppy cultivation in parts of the country. The Government of Afghanistan has noted that establishing a national registry of land ownership could help to kick-start the economy by allowing this land to be used as collateral for entrepreneurial activity, encouraging investment from the private sector and broadening the Government's taxation base.⁴⁶ However, much of this land is currently being illegally occupied or controlled by powerful commanders. Some of these are also public officials, while others have been co-opted by the US forces into its struggle against the remnants of the Taliban. A culture of 'impunity' exists amongst this new class of private land-owners who have come to regard themselves as being 'above the law'.

⁴¹ *ibid.*

⁴² Foley, NRC, 2004.

⁴³ Conor Foley, A Guide to Property Law in Afghanistan, Norwegian Refugee Council and the UN High Commissioner for Refugees Afghanistan, 2005.

⁴⁴ UN Doc. E/CN.4/Sub.2/2004, 1 May 2004, para 17.3.

⁴⁵ See, for example, Press Release, Asia Development Bank, 6 June 2003, noting that only a small proportion of the \$5.1 billion pledged at the Tokyo Conference has been received.

⁴⁶ *Afghan Assistance Coordinating Authority, the National Development Framework*, Government of Afghanistan, Kabul, April 2002.

Georgia

NRC has been working in Georgia since 1994, where about 240,000 people remain in displacement for more than a decade.⁴⁷ NRC runs an education program for IDPs and has also been rehabilitating collective centres, which are often located in former hotels, schools, factories and hospitals.

Georgia experienced two armed conflicts with secessionist territories in the early 1990s. Around 50,000 people were displaced by the conflict in South Ossetia between 1990 and 1992, while about 280,000 ethnic, or part-ethnic, Georgians fled Abkhazia in 1992-1993. The mass expulsion of ethnic Georgians, who previously comprised the majority of the population of Abkhazia has been widely condemned as an act of ethnic cleansing.⁴⁸

Cease-fires ended both conflicts, but there has been no comprehensive peace agreement. The two secessionist regions remain officially part of Georgia and the governing authorities that exercise *de facto* control, do not enjoy international recognition. The official position of the Georgian authorities is that the return of all IDPs to their places of origin is the only acceptable solution. Most IDPs themselves also favour return, but are unwilling to do so under current conditions.⁴⁹ Some limited return took place in the mid-1990s, but many of the returnees were attacked in Abkhazia and forced to flee once again. Around 45,000 IDPs visit the territory on a seasonal basis, to tend their farms, but have not fully returned.

Many IDPs have had their former homes, land and other property occupied by other people. Much of this was formally socially-owned property and some of it has now been re-allocated due to the privatisation policies pursued by the authorities during the 1990s. International pressure has forced the authorities to at least pay lip-service to the concept of property restitution. In 1994 the Georgian, Abkhaz and Russian authorities signed a framework agreement, drawn up with UNHCR and modelled on the Dayton Peace Accords, which recognised the right of IDPs to return to their place of origin and recover their property.⁵⁰ A draft law on property restitution has also been prepared for South Ossetia, but it has not yet been adopted. To date, there has been little sustainable return to either region.⁵¹

Even if an effective restitution policy was developed, it is doubtful if many IDPs will be prepared to return without better security guarantees. Abductions, ambushes, the use of landmines and robberies remain widespread and most of this violence is of a purely criminal nature. Economic conditions also remain harsh and donors have been reluctant to fund infra-structure, income generation and food security activities that would make return sustainable, mainly due to concerns about corruption and the lack of a rule of law.⁵² While return may be the most desirable durable solution for these

⁴⁷ Global IDP Survey, *Georgia: Displacement patterns lead to a concentration of IDPs in a number of Georgian cities (1997)*, www.idproject.org

⁴⁸ Zurab Burduli and Anna Dolidze, 'Housing and property restitution in the Republic of Georgia', in Leckie (Ed) 2003.

⁴⁹ Global IDP Survey.

⁵⁰ Quadripartite Agreement on the Voluntary Return of Refugees and Internally Displaced Persons, Moscow, 4 April 1994, Article 3(c)

⁵¹ Burduli and Dolidze, 2003.

⁵² Global IDP Survey.

IDPs, it is clear that more attention needs to be paid to the conditions in which they are likely to be living for the foreseeable future. Efforts to support property restitution should be pursued independently of the preferred durable solution (return or integration).

Around half of the IDPs in Georgia still live in collective centres. Conditions in the centres are extremely cramped and poverty is rife. According to the UN, about 70 per cent of the collective centres in Georgia do not meet minimum living standards, with inadequate access to clean water, unsafe electric system, and insufficient insulation.⁵³ Despite this, the number of IDPs living in collective centres has increased in recent years because local families are unwilling to host them and they are unable to pay the rents demanded.⁵⁴

NRC's ICLA program is working with IDPs in Zugdidi, Kutaisi, Tbilisi, Rustavi and Gori regions. NRC provides free legal aid, through local implementing partners, using 14 lawyers who staff offices and conduct outreach activities in the collective centres. During 2004, NRC provided services to 144 collective centres, reaching just under one quarter of all the IDPs living in such centres.⁵⁵ Much of the ICLA case-load relates to problems over conditions in the collective centres.

NRC's legal counsellors reported that nearly 60 per cent of the collective centres visited by ICLA lawyers had no identified administration system, nearly 55 per cent experienced regular problem obtaining electricity and over 50 per cent had problems with their basic utility supplies (garbage collection, water supply, heating and sewage).⁵⁶ NRC's legal counsellors also reported that safety of tenure was becoming an increasing concern as some IDPs had been evicted from their collective centres, sometimes because the centres are located in State-owned facilities that are being privatised.

NRC's ILCA program has advised IDPs about their rights when they are threatened with evictions and has also tried to sensitise the Georgian authorities about housing and property rights under international law. It is publishing a report on this issue and has also conducted training seminars on the Guiding Principles on internal displacement. Through its education program, NRC has worked to strengthen the human rights component of the school curriculum.

NRC has also carried out some limited advocacy activities and this is an area that other international agencies are also becoming increasingly interested in supporting. In 2000, UN agencies and the Government of Georgia, launched a policy entitled a 'New Approach to IDP Assistance' which introduced the concept of temporary integration as a goal for IDP assistance. A working group on legal issues has subsequently been established to review laws and practices relating to IDPs and some

⁵³ UN Office for the Coordination of Humanitarian Affairs (UN OCHA), *Georgia Humanitarian Situation and Strategy 2004*, November 2003.

⁵⁴ Larry Dershem, Nana Gurgenidze and Steven Holtzman, *Poverty and Vulnerability Among Internally Displaced Persons in Georgia: An Update of Their Current Status and Circumstances*, paper prepared for the World Bank, November 2002.

⁵⁵ *The right to adequate housing for IDPs living in collective centers; a preliminary report* (Draft), Norwegian Refugee Council, March 2005.

⁵⁶ *ibid.*

discriminatory policies have also been challenged. The ban on IDPs voting in, and standing for, local and parliamentary elections has been revoked and, in November 2003, the Constitutional Court also declared that legal provisions preventing IDPs from acquiring property without losing their national IDP status were unconstitutional.

Azerbaijan

NRC established a program in Azerbaijan in 1995, distributing non-food items, tents, and education equipment. It opened its first office in Baku, in 1997. Its current activities include building homes and schools for IDPs, running a micro-credit and village development program and devising a human rights education program. The conflict between Armenia and Azerbaijan in the early 1990s caused hundreds of thousands of people to flee their homes and today there are 570,000 internally displaced persons and 225,000 refugees in Azerbaijan.⁵⁷

There has been a ceasefire in the region since 1994, but so far, the peace talks have not resulted in a permanent solution. The Nagorno-Karabakh enclave and six surrounding provinces in Azerbaijan are still occupied by Armenian forces. Negotiations are being carried out under the direction of the Minsk group of the Organization for Security and Cooperation in Europe (OSCE), but several peace proposals have been rejected by the parties, and there seems to be little political will to resolve the key issue of the status of the Nagorno-Karabakh enclave.

The Government of Azerbaijan has been reluctant to allow local integration by the IDPs from Nagorno-Karabakh as this might be seen to signal its acceptance of the loss of the territory.⁵⁸ Around half of the IDPs currently live in urban areas, most of them in the capital Baku. Some stay with friends and relatives, while most live in camps or designated public buildings, and a few live in informal or illegal settlements.⁵⁹ Only 15 per cent own their own property, compared to 83 per cent of the non-displaced population.⁶⁰ IDPs are often also restricted to living in particular camps by registration rules, which deny them the right to freedom of movement.

Many of the public buildings in which the IDPs are currently living are dilapidated and overpopulated. Some of them used to be student halls of residence and dormitories. The buildings were not designed for their current use, where often a family of five or six lives in a room intended for one person. Kitchens and bathrooms are shared. After almost ten years of overuse, these buildings are in a poor state of repair and one of NRC's projects is to rehabilitate them and to help the residents take over their running and day-to-day maintenance.

⁵⁷ Global IDP Survey, *Internal displacement in Azerbaijan*, www.idpproject.org

⁵⁸ *ibid.*

⁵⁹ According to official Government figures: 29 per cent of IDPs live in public buildings, 26 per cent stay with relatives or friends, 16.4 per cent live in tented camps and other settlements, 7.4 per cent occupy uncompleted buildings, 6.8 per cent stay in railway wagons; the other stay in illegally occupied apartments and farms

⁶⁰ Steven Holtzman, *Living in limbo: conflict-induced displacement in Europe and central Asia*, World Bank Publication 2004.

NRC's ICLA program in Azerbaijan also provides legal advice and assistance to IDPs, who are often threatened with eviction from their places of temporary residence – despite the legal protection that they theoretically enjoy from a Presidential Decree. The large-scale privatisation of public assets that occurred in the 1990s has led to a number of attempted evictions of IDPs from what were previously public buildings, and the courts often appear unable or unwilling to protect IDPs' rights. NRC's ICLA program has also helped to mediate disputes between IDPs and farmers – whose land they are occupying – in rural areas. During 2004, ICLA Azerbaijan has assisted more than 520 IDPs with housing, land and property related issues. This constituted around 25 per cent of the program's IDP case-load and 80 per cent of the program's in-court representation.

IDPs were largely excluded from the privatisation program carried out in the 1990s, as a result of which over 80 per cent of settled Azeris now own their own homes. Those IDPs who have been able to buy property face problems registering it in their own names as this would effectively mean that they had to abandon their official status as IDPs. This policy is similar to the one that was recently struck down by the constitutional court in Georgia and means that IDPs have to register their property in someone else's name or risk losing benefit entitlements and the right to the eventual restoration of their own homes.

NRC has commissioned a survey on the effects of the privatisation on IDP rights. It carries out systematic documentation of IDP problems and has published a number of thematic reports on these issues. NRC was also instrumental, along with a number of other national and international NGOs, in forming a Working Group on IDP Issues and it is involved in ongoing advocacy work with the Azeri authorities, using the Guiding Principles on internal displacement and other international standards as a reference point.

Colombia

NRC has been working in Colombia since 1996, as part of a consortium, Project Counselling Services (PCS), which consists of five international NGOs. The NRC financed projects include distribution, shelter, income/food security, education, capacity building of local NGOs, as well as legal aid projects. From 2004 the Border Program – consisting of legal aid and humanitarian assistance in Ecuador and Venezuela, and humanitarian assistance in Panama – was taken over and handled directly by NRC. From 2005 NRC has also begun to implement an ICLA program, through local partners, inside Colombia.

The implementation of this program is still at a very early stage, which makes it difficult to draw many conclusions beyond those from the initial assessment mission.⁶¹ The program is being run in coordination with a similar initiative by UNHCR and aims to provide practical assistance to IDPs who are currently living in displacement as well as those who are seeking to return home to recover their land, housing and other property.

⁶¹ This was conducted in October 2004 and included over 60 meetings with Government, municipal and departmental officials; UN agencies; NGOs; legal institutions; human rights groups; and representatives of the targeted beneficiaries in three separate locations.

It is estimated that up to three million people have been forcibly displaced in the conflict in Colombia between Government forces, left-wing guerrillas and right-wing paramilitaries.⁶² Colombia's various protagonists have depopulated certain territory to control strategic zones in an attempt to change the physical demographics of the country.⁶³ Wholesale massacres of those suspected of supporting one side or the other have driven millions into the cities where they now live in squalid shanty-towns.⁶⁴

The Government has been engaged in a dialogue with the paramilitaries over the last three years and hopes that 10,000 of their combatants will be demobilised during 2005. Many observers have criticised the demobilization program for its failure to hold violators of human rights to account or provide the victims of these violations with the right to truth, justice and reparations.⁶⁵ There has been no reciprocal engagement with left-wing guerrillas, since the collapse of a truce in 2001, and Colombia's Government is instead relying on military measures to defeat them.

There was a large surge in the number of internally displaced persons following the collapse of the truce in 2001. The military and police presence in the countryside has since been substantially stepped up and the overall security situation appears to have improved in urban areas. Despite several bombings in 2003, and a number of attacks in early 2005, the guerrillas appear to have been pushed back into their rural strongholds. The UN Office for the High Commissioner for Human Rights (OHCHR) stated that 'the growing trend of forced displacement was reversed' in 2003.⁶⁶ However, OHCHR noted that the total number of people registering as IDPs rose during 2004 although the number of new IDPs declined.⁶⁷ The authorities maintain that this is due to the fact that more IDPs are now officially registering.⁶⁸ Others believe that the level of displacement is continuing to rise and that the improvements in security only really apply to urban areas.⁶⁹ It has also been noted that many communities, although not displaced, are effectively living under siege and denied the right to freedom of movement, which is having an adverse economic impact and makes their current position unsustainable.

Colombia passed an important Law 387 in 1997, which ranks amongst the most progressive laws with respect to IDP rights, in the world. A subsequent Decree 25/64 was introduced in 2001, which should have led to this law being put into effect. A case was also taken to the Supreme Court, which resulted in a judgment T025, requiring the authorities to implement a series of measures to protect IDP rights.

⁶² Global IDP Survey, *Colombia: Democratic security' policy fails to improve protection of IDPs*, www.idpproject.org. The Colombian Government's official estimate is about half this figure.

⁶³ Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, contained in UN Doc. E/CN.4/2004/1317 February 2004).

⁶⁴ *Housing and property restitution for displaced persons in Colombia*, Centre on Housing Rights and Evictions (COHRE), November 2004.

⁶⁵ See for example, *Amnesty International's briefing to the UN Committee against Torture on the Republic of Colombia*, November 2003.

⁶⁶ *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, UN Doc. E/CN.4/2004/13, 17 February 2004

⁶⁷ *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, UN Doc. E/CN.4/2005/10, 28 February 2005

⁶⁸ Interviews during ICLA assessment mission, October 2004.

⁶⁹ See, for example, *Desplazados en el limbo*, Boletín informativo de la Consultoría para los Derechos Humanos y el Desplazamiento, No. 56. Bogotá, 1 de febrero de 2005

However, to date the authorities have still not complied with their own laws. Some amendments have been introduced that have weakened Law 387 and some of the rights that it gives are hedged by qualifications, which lessen their impact. However, the main problems appear to be a lack of resources and political will to implement the law, together with a failure to disseminate its provisions to State officials.⁷⁰ OHCHR recently criticised the Colombian Government's failure to implement the decision of the Supreme Court.⁷¹

The Government's official policy is to encourage people to return to their original homes, but OHCHR has questioned whether such returns are always completely voluntary and undertaken in conditions of dignity and security. The prospects for large-scale return still appear remote and NRC's ICLA program is simultaneously working to defend the rights of IDPs in displacement while advocating for the restitution of their housing, land and other property.

The Colombian conflict has been used as cover for a massive 'counter-land reform' in which the stark inequalities of land ownership have worsened. In October 2004 a proposal was introduced in the Congress that would have legalised many of the land seizures that have been carried out over recent years. Although this was defeated, it is likely that a similar legislative proposal will re-emerge. The paramilitaries were largely created by groups of landowners to protect them from the guerrillas and Colombia's Congress is dominated by large landowners. One paramilitary leader estimated, in the autumn of 2004 that up to 35 per cent of the Congress are paramilitary sympathisers. The paramilitaries also have a significant influence in many municipalities. Pursuing a policy of land, housing and property restitution in these conditions is therefore likely to be a significant challenge.

Uganda

NRC established its country program in Uganda in 1997 and the country office was moved from Kampala to Gulu, in the Northern part of the country in 1999.⁷² The primary target group of the program is internally displaced persons (IDPs) in Gulu, Kitgum and Pader districts and NRC is engaged in four core activities: distribution of food and non food items, construction of schools, teacher training, and information, counselling and legal assistance (ICLA).

Northern Uganda was once relatively prosperous, but it has been devastated by the 18-year war between the Lords Resistance Army (LRA) and the Government. In 1996 much of the rural population of Gulu District was ordered into camps or 'protected villages'. This was only intended as a temporary measure, but, eight years later, they are still there, joined over the years by several hundred thousand other displaced persons.⁷³ Following the Uganda Army's (UPDF) pursuit of LRA into South Sudan, there was a major escalation of LRA activity within Uganda, and in September 2002 almost the entire rural population of the three Districts of Acholiland (Gulu, Kitgum

⁷⁰ COHRE, November 2004.

⁷¹ UN Doc. E/CN.4/2005/10, 28 February 2005.

⁷² NRC also has field offices in Kitgum and Lira, and is in the process of opening one in Pader.

⁷³ WFP Emergency Report No. 4 of 2004. Approximately 879,000 people out of a total population of 1,076,000 in Gulu, Kitgum and Pader have been displaced. The total in the whole of northern Uganda is now 1.55 million.

and Pader) were forced into camps by the UPDF. During 2004 the security situation improved somewhat, but the current humanitarian situation remains one of the worst in the world.⁷⁴

The ICLA program was initiated in August 2002, in Gulu district, in the context of peace talks that, it was hoped, would enable about 500,000 IDPs to return to their homes. However, the peace failed to materialise and the Government launched a military offensive instead. By mid 2003, the conflict had spread to the east of Uganda and the number of displaced people tripled. The total number of registered IDPs is now 1.6 million, but the real figure probably exceeds two million.⁷⁵ Return is not a realistic possibility for most IDPs in the foreseeable future and the ICLA project has therefore transformed itself to an IDP protection programme.

The ICLA program works with two local implementing partners, the Gulu-based human rights organization Human Rights Focus (HURIFO) and the Legal Aid Project (LAP) of the Uganda Law Society. The ICLA program also acts as secretariat of the Gulu Protection Working Group, which is chaired by the Uganda Human Rights Commission and includes all the major UN agencies and national and international NGOs concerned with protection and human rights issues. The ICLA project also implemented a one-year IDP camp-monitoring project for the UN Children's Fund (UNICEF) in 2004. The ICLA project is expanding to Kitgum and Pader in 2005, where it will link-up directly with community based organisations (CBOs) which have paralegals and community based volunteers in the IDP camps.

In 2001, the Government of Uganda started drafting a National Policy on Internal Displacement. Much of the new policy is based on the UN Guiding Principles on Internal Displacement. Substantial input was made by civil society organisations on the drafts. The final policy, which was adopted by the Cabinet on 25 August 2004, can become an important tool in advocating for increased protection of IDP rights. However, no implementation plan has yet been made available, nor is it clear what resources need to be allocated by the central Government for its implementation.

NRC's ICLA program has focussed much of its advocacy work on the issue of land and recently supported the publication of a piece of research on the subject by a coalition of NGOs.⁷⁶ This found that the vast majority of IDPs want to return to their own land once hostilities cease. Three quarters of IDPs questioned were found to be less than 6km from their land and their return should be straightforward once the security situation improves. However, almost half of IDPs expressed fear about their ability to regain their land.

Traditionally, the people of Northern Uganda live in small villages or homesteads of a handful of houses. Nearly all cultivated land is attributed to individuals under customary tenure. People own land simply because they have always lived on it and

⁷⁴ Human Rights Focus, *Between Two Fires, the human rights situation in "protected camps" in Gulu District*, Gulu, February 2002, p. 17.

⁷⁵ Many IDPs are in non-recognised camps or are living in towns in northern Uganda, in Masindi district (south of the Nile) or in Kampala.

⁷⁶ Judy Adoko and Simon Levine, *Land Matters in Displacement, The Importance of Land Rights in Acholiland and What Threatens Them*, Civil Society Organisations for Peace in Northern Uganda (CSOPNU), December 2004.

because they have always been regarded by everyone else as the 'owners' of their land. They have no official papers proving that they own the land and giving them rights over it. The question of 'ownership' also needs to be seen in its particular cultural context, in which 'stewardship' might be a more accurate term. Women do not usually 'own' land under customary law, but often have explicit rights to use it and a woman-headed household has the right to decide to whom the 'ownership' of her land should pass.

Dispute resolution in customary tenure is based more on mediation than upon passing judgement in favour of one party or another. Where a dispute arises within a family, the person who has been chosen as the family head will resolve the dispute. Where a dispute is between families, usually between neighbours, then the *Rwot Kweri* (village chief) will adjudicate or mediate. The system is simple, cheap and accessible and people are largely satisfied with the judgements received. Appeals can be made to the clan elders and cases with major implications for the clan as a whole, such as a long-term decision involving communal land, would also need to involve the clan elders.

Land issues make up the majority of the legal work of NRC's ICLA. This ranges from mediating disputes between neighbours, to protecting particularly vulnerable groups (such as widows and orphans), and advocacy work with the authorities. ICLA uses both customary and formal mechanisms and has filed a number of cases through the Local Council system and in the District Land Tribunal.

In 1998 a Land Act was passed, which recognised, for the first time, customary tenure alongside other forms of land tenure (freehold, leasehold and *Mailo*), however the translation of customary rules into modern law has not been straightforward due to their complexity and the myths that surround them. Customary rules have often never been written down and they are constantly changing and adapting to new circumstances.⁷⁷ The State legal system and the customary system are also based on very different working cultures and the creation of a new set of 'modern' institutions to administer customary law may significantly weaken the latter.

The 1998 Act provides a new system for dealing with land disputes that by-passes not only the normal courts of law, but also the traditional customary dispute resolution mechanisms. The Act also provides for the establishment of Certificates of Customary Ownership that can be used as proof of ownership and may eventually be converted into freehold titles. The Act also theoretically provides women with more rights over the 'common property' of a household. However, no Certificates of Customary Ownership have yet been issued and some observers fear that the conversion of customary ownership into modern titles could have a particularly negative impact on vulnerable groups, such as widows and orphans, who will lose their rights under a more 'individualistic' system.⁷⁸

Alongside this potential erosion of traditional land rights, Northern Uganda's displacement crisis has been accompanied by land seizures and occupations, which may prevent some IDPs from ever returning home. Many people have lost the use of their land because it has been occupied by defence forces or designated for the

⁷⁷ CSOPNU and LEMU, December 2004. .

⁷⁸ *ibid*

construction of IDP camps. Others are simply too scared to return home, either due to fear of the LRA, or because they are restricted to living in 'safe areas' by the UPDF. Some land has also reportedly been stolen for personal gain by senior officers of the UPDF, taking advantage of the lack of a rule of law and climate of impunity that currently exists.⁷⁹ IDPs with only customary tenure rights, and no documents, are particularly vulnerable to such land-grabs.

NRC has mounted challenges to the seizure of land by the state – for the construction of military camps and IDP facilities – and argues that just compensation should be given to the legitimate owners. The ICLA program also monitors harassment and human rights violations against would-be returnees by the UPDF and advocates for land rights for IDP while they are in displacement.

Land is essential for housing, latrines, burial, livestock, and for economic survival. The study referred to above, that NRC commissioned, showed that 13 per cent of IDPs questioned had no access to land and over 50 per cent had access to less than half an acre.⁸⁰ Moreover, the UPDF are actively preventing many IDPs from cultivating crops, for fear that these will be stolen by the LRA, as part of a counter-insurgency strategy aimed at starving the rebels into defeat. Whatever the military merits of this strategy, it is currently exacting a heavy cost on Uganda's IDPs. As the report's authors note:

The sad truth is that no one knows, because no one is trying to find out how many people are dying in the camps or why. The few pieces of evidence collected are worrying: children are dying every day from camp conditions; HIV figures which translate into an additional tens of thousands of IDPs living with HIV/AIDS (over and above the figures one could have expected without displacement). Hundreds of IDPs are killed each year and many more are abducted, either in attacks on camps or because hunger and poverty forced them to go back to their villages for food or to earn money. Thousands of young men have 'disappeared' after volunteering as local civil militia, tens of thousands more have probably become alcoholics, with what long-term consequences no one can guess. . . . If the current military policy continues, one can expect a continuing deterioration in the food security of IDPs so any disruptions to the supply of food aid by WFP [World Food Program] could be very serious. The only scenario that can save the situation is if the war ends and people go home. This, all IDPs agreed, would be the best solution for food security.⁸¹

Sudan

NRC has been in the process of establishing an ICLA presence in Sudan since June 2004. The Government of Sudan (GoS) formally agreed to allow ICLA to commence its activities in Khartoum in December 2004. Assessment missions have also been carried out in the south of the country, but the program is not yet fully operational there.

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ *ibid.*

More than four million people have been displaced from their homes in Sudan over the last twenty years. The civil war originally focused upon the conflict between the Government in the north and the Sudan Peoples Liberation Army in the south. This has been exacerbated by the more recent outbreak of fighting in the western region of Darfur, which has also resulted in the diversion of much needed resources away from Khartoum. Approximately half of all of Sudan's IDPs are living in Khartoum, in its environments, camps and squatter areas.

The vast majority of IDPs living in Khartoum originate from South Sudan. Many are adults who have lived for over twenty years in a camp and children who were born there. Conditions in the camps are squalid, and in many instances, unfit for proper human habitation. The vast majority of houses are fabricated from mud brick, straw and a variety of materials salvaged from garbage. Educational opportunities for children are limited and health facilities inadequate.

In an effort to deal with the problems of overcrowding, the Government of Sudan (GoS) has been demolishing IDP homes, ostensibly to convert the camps into more stable residential communities. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), at least 665,000 Sudanese IDPs living in camps and squatter areas in Khartoum have had their homes demolished and have been relocated at some point over the past 16 years.

Over the past 11 months, more than 300,000 IDPs have had their homes demolished and have been relocated by GoS security forces to El Fateh, a desert area 38 km north of Omdurman. At least one primary health care facility and three churches have also been demolished. Seventy-seven per cent of those relocated have not received plots, including vulnerable groups such as female-headed households and IDPs without personal documentation. In addition, IDPs arriving in Khartoum since 1997 have been excluded from the plot allocation process. The system for purchasing plots of land is slow, complex and expensive. The procedural criteria for plot allocation and the requirements that an IDP must fulfil to obtain it are also unclear.

There is no unified, single legal framework governing property ownership that is accepted by all parties as being legitimate for the whole country. The GoS applies the statutory law in the areas that they control: the north and some garrison towns in the south, while the SPLM applies its own laws in the areas that it controls. Sudanese law is based on the legal framework inherited from the colonial period.⁸² However, the SPLM refuses to accept this law in the areas that they control. The SPLM judicial system relies heavily on customary legislation, especially for regulating access to rural land and dealing with related problems.⁸³

On 9 January 2005 a peace agreement was signed between the Government of Sudan and the Sudanese Peoples Liberation Movement (SPLM) and, many IDPs have expressed a desire to return to their areas of origin in the South. However, the South remains seriously unprepared for the possibility of hordes of returning IDPs.

⁸² "Interim Report: Scoping of Issues and Questions to be Addressed", Paul V. De Wit, August 2004, page 10

⁸³ *ibid.*

NRC's ICLA program aims to disseminate information to IDPs in Khartoum regarding their areas of origin in the south so that they can make an informed decision about whether to return home. The program also provides free legal counselling, through local NGOs. The information and legal assistance is provided via a mobile unit and the staff visit different camps and squatter areas on set days of the week.

The program has also organised workshops for various actors, including IDPs, community leaders, local and international NGOs, UN agencies and the authorities. The topics presented include the Guiding Principles, protection issues, local laws, and international human rights law. The program engages the services of a local NGO to conduct paralegal workshops in the camps and squatter areas on a bi-monthly basis. The participants are female IDPs who have been chosen to become paralegal focal points for IDPs living in the camps. The program is also working with government officials to find means of issuing basic documents to IDPs in the camps.

NRC ICLA also participates in a collective NGO advocacy coalition. The coalition has lobbied the GoS Minister of Physical Planning and Utilities to improve the provision of basic services and to make the planning process more accountable. The coalition has specifically requested advance warning of planned demolitions; public guarantees of the provision of services in places of relocation; and the establishment of transparent mechanisms for plot allocation. The advocacy coalition has built good links with Mr. Jan Pronk, the Special Representative to the Secretary General for Sudan.

The GoS recently approached various UN agencies and NGOs, seeking support for the implementation of a survey of IDPs. NRC has joined a consortium of agencies involved in the survey and contributed with financial support towards its implementation. The resulting survey report will illustrate the IDP's attitudes and intentions towards return. NRC has also supported a piece of research conducted by a land and property consultant regarding relevant laws on land and property. The report was finalized in August 2004 and workshops on the findings contained in the report will be implemented in the near future.

Sri Lanka

NRC established an ICLA program in Sri Lanka in early 2005. This program had been planned for a number of years, but was given additional impetus by the tsunami disaster of 26 December 2004. Six ICLA centres are being established in the north and east of the country and NRC is also supporting the work of two locally-based NGOs, the Legal Aid Foundation (LAF) and the Centre for Housing Rights and Evictions (COHRE).

For over 20 years, the Government of Sri Lanka (GoSL) has been engaged in a conflict with the Liberation Tigers of Tamil Eelam (LTTE), an organization fighting for a separate ethnic Tamil state in the north and east of the country. A cease-fire was announced by both sides in February 2002, but a comprehensive peace agreement still seems a long way off. The conflict has claimed more than 64,000 lives and the two sides have reached a stalemate that leaves the LTTE in *de facto* control of a significant portion of the contested territory. Civilians have been killed by both guerrillas and government forces and there have also been acts of widespread

communal violence. The LTTE is infamous for its repression of internal dissent and has also been criticised for a number of violations of the laws of armed conflict, including the recruitment of child soldiers.⁸⁴

The conflict has forced the displacement of members of all of Sri Lanka's main ethnic groups: Tamils, Muslims and Sinhalese people. Currently, more than 350,000 people remained internally displaced because of the conflict. Some 369,000 people, out of a total internally displaced population of 730,000, have resettled or relocated since the ceasefire in early 2002. Some refugees are also spontaneously returning from India. The displacement emergency has been further exacerbated by the tsunami disaster which hit Sri Lanka 26 December 2004 and displaced over 500,000 people.

Policy responses to the land and property rights of IDPs involve several issue areas, including transitional shelter and resettlement programs, restitution of property, identity and property documentation and registration, boundaries, women IDPs, financial and social assistance, freedom of movement, landmines and unexploded ordnance and High Security Zones.

Returning IDPs face a variety of problems, including: safety threats, property dispossession, landlessness and a lack of basic infrastructure and basic services. Displaced women, especially female-headed households, are among the most vulnerable. They face inequitable policies for distributing assistance as well as obstacles in gaining legal title to land and property. Although there has been significant return since the cease-fire of 2002, the process of return has slowed and those who have not yet attempted to return will increasingly find major legal difficulties as time goes on and more land becomes reoccupied. At the same time there are possible problems arising out of the many legal and practical issues with land rights such as disputes over land boundaries, identifying property for second generation IDPs and former homes having been occupied by new tenants, as well as tensions between resettled families and host communities.

Sri Lanka has a written constitution – which guarantees certain ‘fundamental rights’ – and a Roman Dutch Legal framework. It also inherited a common law tradition from the British colonial period, in which the law evolves through judicial interpretation. Sri Lanka's courts are independent and widely recognized to be fair. The Supreme Court often draws on international human rights jurisprudence in its judgments. The main criticism of the Sri Lankan courts is that they are very slow and, therefore, costly. It takes years to get a final decision from the courts and, for this reason, many people prefer to settle disputes using more informal methods.⁸⁵

Mediation Boards have been introduced in much of the south and west of the country and it is compulsory to take minor civil cases (where the value of the goods in dispute is under \$250) to a Mediation Board before the courts will consider it. The Mediation Boards successfully resolve around 60 per cent of the cases submitted to them.

⁸⁴ See M. R. Narayan Swamy, *Inside and elusive mind: Prabhakara*, Vjitha Yapa Publications, 2005; and M. R. Narayan Swamy, *Tigers of Lanka*, Vjitha Yapa Publications, 1994.

⁸⁵ Interviews conducted by NRC during the assessment mission in February and March 2005 with the Asia Foundation, the Legal Aid Commission, the Legal Aid Foundation, the Human Rights Commission of Sri Lanka, UNHCR and OHCHR.

However, they have been accused of bias by some observers who say that they sometimes operate in a politically partisan way.⁸⁶

There are very few Mediation Boards currently operating in the north of the country and there are very few Tamil speaking mediators. Another problem with introducing them to the north of the country is that they are perceived as being part of the machinery of the GoSL. Since the 2002 cease-fire, the LTTE has established Political Offices in some GoSL-controlled – but majority Tamil – areas such as Vavuniya, Trincomalee and Batticaloa. These offices play a significant role in settling disputes informally – through a mixture of both mediation and coercion.⁸⁷

A law passed in 2003 provides for the establishment of Special Mediation Boards, but none have been established to date. In the wake of the tsunami disaster it has been proposed that Special Mediation Boards should be established to sort out tsunami-related land disputes.

In the LTTE-controlled areas, the LTTE has its own set of laws, structures and courts that run parallel to the overarching framework for land and land use planning. The ‘Head Office’ functions as the central office for all judicial institutions. Legislation is drafted by the legislative branch, and is then sent to the Committee for the Review of Legislation. After review, the final draft is sent to the ‘National Leader’ for approval. The LTTE has legislation covering a broad range of issues including dowry, national property and evidence, and is presently in the process of drafting legislation related to land. The courts work together with the Tamil Eelam Police to enforce LTTE laws. In the ‘uncleared’ areas on the Eastern coast, both the courts administered by the GoSL and the courts administered by the LTTE operate. This situation has created confusion among civilians regarding the effectiveness and jurisdiction of the judicial system.

NRC’s ICLA program in Sri Lanka will be seeking to develop a litigation strategy, in conjunction with COHRE, aimed at defending the rights of IDPs to return and restitution through the official courts. Part of this strategy is likely to include challenging the prevention of return to some parts of the High Security Zones, the occupation of civilian houses by the military and other discriminatory or arbitrary obstacles to people returning to their own homes. The program will also be promoting ‘rights awareness’ training in conjunction with the LAF.

The biggest challenges facing the program are likely to be how best to resolve cases for its clients where it is judged that the actions of the official courts are likely to be either too slow or ineffective. NRC has experience of using traditional and informal justice mechanisms in other parts of the world, but also respects the sovereign authority of the government in all the countries where it operates. Where cases can be solved through mediation NRC’s legal counselors will promote such efforts and it will also provide legal advice to potential beneficiaries about their options in different parts of the country. NRC will not recognize the legitimacy of any unofficial quasi-judicial bodies, but it may monitor such bodies and seek to promote higher standards of justice in them, based on the principles of international human rights law.

⁸⁶ *ibid.*

⁸⁷ *ibid.*

Conclusions

As the preliminary report of the Special Rapporteur notes, the issue of land, housing and property restitution is a pressing concern for millions of persons displaced throughout the world. The right of these people to return home in safety and dignity is still not widely recognised by many States, either in principle or practice. One significant reason for setting and defining standards, through the adoption of these principles, should be to mobilise international opinion to support HLP restitution programs.

This paper contains a brief overview of some of NRC's experiences in trying to defend HLP rights on behalf of people who have been driven from their homes. Although NRC's ICLA programs have been implemented in a wide variety of different settings, we believe that they share some common features, which may provide useful guidance for the development of a global HLP restitution strategy.

First of all, we endorse the optimism of those who believe that restitution policies can be implemented in post-conflict situations as an important form of restorative justice. Even in the absence of a fully-functioning system of justice, or rule of law, people can and do return home to recover their land, housing and property rights. Providing such people with free legal assistance is an effective way of helping them to assert their rights.

Secondly, we believe that national legal systems often discriminate, intentionally or unintentionally, against people who have been displaced from their homes. As well as providing IDPs with legal assistance, it is, therefore, important to advocate on their behalf and to mobilise national and international opinion on behalf of HLP rights for the displaced, both while they are in displacement and in their efforts to return home and to have their property restored to them. It is also important that the international community itself does not compound displacement crises. The promotion, for example, of particular economic policies may have the effect of making it more difficult for people to regain possession of their HLP rights and such issues need to be considered in the design of these policies.

Thirdly, where existing national legal systems are not effectively functioning in a timely, accessible and fair manner, it may be necessary to use alternative remedies, either as an interim measure, or in a manner that complements the existing official system. NRC has considerable experience of working with 'customary', 'informal' or 'tribal' justice mechanisms for settling HLP disputes. NRC has also worked with HLP commissions in some countries. We believe that both of these mechanisms have a useful role to play in settling HLP disputes, particularly where this is beyond the capacity of the official legal system. For such mechanisms to play a constructive role they must be:

- legitimate in the eyes of the population concerned
- accessible to poor, and sometimes illiterate, people
- timely in their decision-making
- transparent in their functioning
- non-discriminatory
- fair in their decisions
- compatible with both the national legal system and international human rights law

We believe that where traditional dispute resolution mechanisms are used as part of a HLP restitution program, consideration should be given to monitoring its procedures and to training its members in basic human rights law and principles. Where an HLP commission is introduced, this should be preceded by genuine consultation with all those who have a stake in its functioning. NRC's experience has at some occasions shown that imposing such a commission from the outside may prove counter-productive. International humanitarian aid workers often bring particular cultural assumptions with them to a country, based on their own domestic laws and experiences. Sometimes these will prove inappropriate to the country in which they are now working and care should be taken to avoid 'cultural imperialism' or 'liberal vanguardism.'

Nevertheless, we also believe that one should be prepared to face down resistance to restitution programs, where the victors of a conflict are obstructing the legitimate right of people to return to their own homes. This may involve pressurising national governments, or non-governmental actors, to end or repeal discriminatory laws and practices. It may also involve providing people who wish to return home with physical protection. Peacekeeping forces may be required to uphold the rule of law and maintain stable domestic situations in which restitution programs can be implemented. They may also be required to protect property records, public officials and humanitarian aid workers who are implementing restitution programs and the lives of returnees and displaced persons themselves.

Finally, however, it should be noted that restitution of HLP rights should not be made conditional on the physical return of someone who has been displaced from their home or place of habitual residence. Where physical return is not possible, or is not the preferred choice of the displaced person, that person should still have the right to have his or her property returned to its rightful ownership. Where IDPs opt for local integration this should not exclude them from future restitution programs, nor from receiving full compensation for their losses. All laws and practices which have the affect of discriminating against displaced people or preventing them from integrating locally and enjoying equal rights with the non-displaced population should be abolished or repealed.